IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN, JAIPUR BENCH, JAIPUR.

1. S. B. CIVIL MISC. APPEAL NO. 2077/2004
   (Rishi Raj Vs. Smt. Kusum Lata)

2. S. B. CIVIL MISC. APPEAL NO. 2081/2004
   (Rishi Raj Vs. Smt. Rajkumari)

3. S. B. CIVIL MISC. APPEAL NO. 2431/2004
   (Saroj Kandoi Vs. Raj Kumari)

4. S. B. CIVIL MISC. APPEAL NO. 3795/2006
   (Nirmal Kumar Vs. Kusumlata)

5. S. B. CIVIL MISC. APPEAL NO. 2432/2004
   (Ashok Kumar Mittal Vs. Rajkumari)

6. S. B. CIVIL MISC. APPEAL NO. 02761/2004
   (M/s. Jyoti Electricals Vs. Kusum Lata)

Date of Judgment: 13th March 2007.

Hon'ble Mr. Justice R. S. Chauhan

Mr. B.D. Agarwal,
Mr. Sudesh Bansal, for the Appellants.

Mr. Rishi Parashar,
Mr. Sailesh Prakash Sharma,
Mr. Prakash Thakuria, for the Respondent.

(Per Court):

All these appeals challenge the order dated 7.8.2004 passed by the Additional District Judge No.1, Jaipur City,

Jaipur, whereby the learned Judge has restrained the appellants from transferring the property in dispute and from raising any further construction and from changing the nature of the property in dispute.

The facts of the case are being taken from the first appeal mentioned above, namely Rishi Raj Sharma Vs. Smt. Kusum Lata, as the facts are similar in all the above mentioned appeals. On the basis of an agreement to sale dated 14.4.82, the respondent No.1/plaintiff Smt. Kusumlata Kotowala filed a civil suit for specific performance of contract on 13.12.2002 in relation to a property situated on plot No.9, New Sanganer Road, Sodala, Jaipur. According to the plaint, the dispute relates to Plot No.9, New Sanganer Road, Sodala. According to the plaintiff, on 1.11.1970, one Smt. Prakashwati Gupta originally bought the said plot from Shri Ganesh Cooperative Housing Society. The said sale-deed was subsequently registered on 23.6.1971. Subsequently, Smt. Prakashwati Gupta gave a Power of Attorney to her husband Shri Gyaneshwar Prasad Gupta. The said Power of Attorney was

registered on 24.11.1978. In turn, Shri Gyaneshwar Prasad Gupta sold the said plot to Shri Madan Lal Chaurasiya. On the basis of an application moved by Mr. Chaurasiya, the said plot was transferred in his name in the record of the Housing Society. Subsequently, Mr. Chaurasiya gave his Power of Attorney to Shri Jugal Kishore Agrawal. The said Power of Attorney was also registered on 8.2.1982. Subsequently, on 14.4.1982, through his Power of Attorney Holder, Shri Madan Lal Chaurasiya sold half of the plot to the plaintiff through an agreement to sale. The plaintiff claimed that she had paid a consideration of Rs.13,500/- for the said plot. The other half of the plot was sold to Smt. Rajkumari Agrawal by Shri Jugal Kishore Agrawal. Subsequently, the plaintiff also paid the conversion charges for the said plot. She further claimed that she insisted with the respondent No.1, Shri Jugal Kishore Agrawal to get the sale deed registered for her portion of the said plot. Mr. Jugal Kishore Agrawal also informed the plaintiff that he has filed cases against certain persons and the necessary documents are with the court. As soon as the case is decided, he would get the necessary documents and would

get the sale-deed registered. But, he kept on delaying the registration. On 1.12.2002, when the plaintiff's husband went to the site, he realized that a large number of persons had encroached upon the plot. To their great surprise, they learnt that Shri Jugal Kishore Agrawal has given the possession of this plot to the appellant-defendant Rishi Raj and the respondents No.2 to 8. Therefore, the plaintiff filed the said civil suit for specific performance of the contract and for permanent injunction against the respondents No.2 to 8. Along with his suit, she filed an application for temporary injunction under Order 39 Rules 1 & 2 CPC (henceforth to be referred as 'the Code', for short). The respondents No.2 to 8 and the appellant filed their written statements and denied the averments made in the plaint. However, after hearing all the parties, vide order dated 7.8.2004, the learned Judge granted a temporary injunction as mentioned above. Hence, these appeals against the order dated 7.8.2004.

Mr. Sudesh Bansal, the learned counsel for the appellants, has vehemently argued that the appellants have

already raised construction on the land in dispute. The said construction needs to be completed in some of the cases and certainly needs to be maintained in all the cases. There are shops, which are being run, and there are certain residential areas that have been constructed. Therefore, the learned Judge should not have prevented them from completing the construction and from raising further construction on the plot. According to the learned counsel, the civil suit is barred as the said has been filed almost after 20 years from the date of the agreement itself. He has also challenged the veracity of the agreement to sale.

On the other hand, Mr. Rishi Parashar, the learned counsel for the respondents, has argued that substantive issues have been raised in the suit, which can only be decided after recording the evidence during the trial. At the initial stage of grant of temporary injunction, the court cannot examine the veracity of the agreement to sale-dated 14.4.1982. For, at the initial stage, the court does not hold a mini-trial. Moreover, the learned Judge has merely prevented the appellants from

transferring the property and from raising further construction. Such an injunction was needed so as to prevent further litigation from being created and to prevent the nature of the property being changed. Therefore, he has supported the impugned order.

We have heard all the counsels for the parties and have perused the impugned order. In order to discover the actual present position at the site, this court had directed the appellants to file their affidavits along with photographs of their respective properties. The appellants have filed the affidavits. The same shall be taken on record.

In dealing with a case of property dispute, the foremost consideration should be the preservation of the property. In case the nature of the property is changed, in case the property is transferred, in case third party rights are created, such a situation is bound to lead to endless litigation, chaos and confusion. Therefore, in the case of **Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass, AIR 2005 SC 104**, the

Hon'ble Supreme Court has held that ordinarily status quo should be maintained. Similar view has also been expressed by this court in the case of **Smt. Rama Devi & Ors. Vs. The Sanganer Cooperative Housing Society Ltd, 1986 RLR 1018**. In the case of **Anand Prasad Agrawal Vs. Tadkeshwar Prasad & Ors. (2001) 5 SCC 568**, the Apex Court clearly held that, "it may not be appropriate for any court to hold a mini-trial at the stage of grant of temporary injunction". In the case of **Mishri Lal & Anr. Vs. Ramdev & Ors., 1998 WLC (UC) 610**, this court opined that "the court examines the document only for the purpose of seeing whether a prima facie case is made out or not. If in an application under O.39 R.1 & 2 CPC, the court started finally determining the probative value of the document, great injustice will be done to the parties". In the case of **Narendra Singh Rajawat & Ors. Vs. Thakur Mohan Singh Kanota & Ors., 2002 (2) WLC (Raj.) 362**, this court held that "while granting temporary injunction, the courts should not deal with the merits of the suit". In the case of **Rajastan State Electricity Board Vs. Mool Chand Jangir, 1993 (3) WLC (Raj.) 338,** this court clearly held that "the scope of the

appellate court in interfering with the order of injunction is extremely limited. The appellate court cannot set aside the order of the trial court merely on an application of the pleadings and the evidence, it may form an opinion other than the one formed by the trial court".

Thus, while deciding the present case, the principles enunciated above have to be borne in mind. Since there is a dispute concerning the land, the property needs to be preserved. In case, the appellant are permitted to transfer their property to a third party, third party rights would arise. Such a situation would unnecessarily lead to increase a litigation – a luxury the judiciary cannot afford as the judiciary is already over burdened by a large number of dockets. Moreover, the plaintiff cannot be embroiled in large number of cases. Therefore, the learned Jude was justified in preventing the appellants from transferring their property to a third party.

It is also imperative that the nature of the property be maintained and not be permitted to be changed by the

appellants. Hence, the learned Judge was justified in preventing the appellants from raising any further constructions. However, the property needs to be maintained during the course of the trial. Therefore, this court accepts the limited prayer of the appellants and permits them to carry out the white washing of the property and to carry out minor repair works for the maintenance of the property. However, it is clarified that in the garb of this modification/permission, the appellants shall not raise any further construction more than what it shown in the photographs submitted by them in the affidavits filed them before this court. In case, they raise any further construction in the garb of this order, the respondent-plaintiff shall be at liberty to immediately move a contempt petition before this court. The order dated 7.8.2004 is modified to the limited extent mentioned above. The learned trial court is directed to decide the case by December 31, 2007. With these observations, these appeals are partly allowed.

(R.S. Chauhan) J.